

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ALBERTO RIOS,

Case No. 10-CV-3313 (PJS/FLN)

Petitioner,

ORDER ADOPTING REPORT AND
RECOMMENDATION

v.

SCOTT PETER FISHER,

Respondent.

Alberto Rios, petitioner pro se.

D. Gerald Wilhelm, UNITED STATES ATTORNEY'S OFFICE, for respondent.

This matter is before the Court on the objection of petitioner Alberto Rios to the May 25, 2011 Report and Recommendation ("R&R") of Magistrate Judge Franklin L. Noel. Docket No. 11. Judge Noel recommends that Rios's petition for habeas corpus under 28 U.S.C. § 2241 be denied and that this action be dismissed with prejudice. The Court has conducted a de novo review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court overrules Rios's objection and adopts the R&R.

Rios has also filed a motion asking that respondent turn over to the Court the inmate letters that Rios was accused of attempting to mail outside the prison. Docket No. 13. Rios characterizes the letters as *Brady* material. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) (due process requires disclosure of evidence favorable to the accused that is material either to guilt or punishment).

It is not this Court's role, however, to conduct a de novo review of respondent's disciplinary decision. Instead, this Court is limited to determining whether there is "some

evidence” supporting the decision. *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 455 (1985). “Ascertaining whether [the “some evidence”] standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence.” *Id.* As it is clear from the record before the Court that there is “some evidence” supporting respondent’s decision, it is unnecessary for the Court to review the letters.

In addition, “*Brady* . . . involves a criminal proceeding which is far removed from the internal administration of prisons.” *Brown v. Frey*, 889 F.2d 159, 170 (8th Cir. 1989). Rios’s *Brady* motion is therefore denied.

ORDER

Based on all of the files, records, and proceedings herein, the Court OVERRULES petitioner’s objection [Docket No. 12] and ADOPTS the R&R [Docket No. 11]. IT IS HEREBY ORDERED THAT:

1. Petitioner’s 28 U.S.C. § 2241 petition for writ of habeas corpus [Docket No. 1] is DENIED.
2. Petitioner’s motion requesting *Brady* material [Docket No. 13] is DENIED.
3. This action is DISMISSED WITH PREJUDICE AND ON THE MERITS.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 15, 2011

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge